

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7389

Petition of Vermont Electric Power Company,)
Inc., and Vermont Transco LLC, for authority to)
condemn easement rights in property interests of)
David M. and Denise B. Russo and Northfield)
Savings Bank, located in Waterbury, Vermont,)
for the purpose of constructing the 115 kV)
transmission line portion of the so-called)
Lamoille County Project)

Order entered: 8/12/2009

ORDER CLOSING DOCKET

REPORT

On December 12, 2007, Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, "VELCO"), filed a petition to condemn easement rights across land belonging to David M. and Denise B. Russo and the Northfield Savings Bank, located in Waterbury, Vermont. On February 20, 2008, I convened a prehearing conference in the matter in order to establish a schedule for this proceeding.

On October 6, 2008, VELCO filed a Notice of Dismissal of its petition. On July 14, 2009, VELCO filed a letter with the Public Service Board ("Board") requesting that the Notice of Dismissal be treated as a motion for dismissal pursuant to V.R.C.P. 41(a)(2).¹

Voluntary dismissal of an action by the plaintiff is only available under V.R.C.P. 41 (a)(1) before an adverse party serves an answer or a motion for summary judgment (or by a stipulation signed by all the parties). In considering the application of this rule to proceedings before the Board in other dockets, the Board has concluded that it is not clear that a voluntary

1. Since proceedings had already commenced in this docket, it is appropriate to treat the Notice as a motion for dismissal pursuant to V.R.C.P. 41 (a)(2).

dismissal under V.R.C.P. 41(a)(1) is available to a petitioner once proceedings have commenced and a prehearing conference has been held.²

Accordingly, as VELCO requests, I will treat the notice of voluntary dismissal as a motion for dismissal pursuant to V.R.C.P. 41 (a)(2). It appears that the only prejudice arising from dismissal of this petition would be to the party seeking condemnation of the Russos' property (namely, VELCO) and that party is now requesting the dismissal. Therefore, I conclude that the petition for condemnation may be dismissed and this docket closed.

This decision is not adverse to the interest of any party, so it need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 28th day of July, 2009.

s/Gregg Faber
Gregg Faber
Hearing Officer

2. See, for example, Docket 7397 (Order of 11/13/2008); Docket 7419 (Order of 5/21/2009).

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. The motion to dismiss the petition to condemn is granted.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 12th day of August, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 12, 2009

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.